

CV 09 0013

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
ROBERT L. MERCER,

Plaintiff, (S.4)

-against-

RAILDREAMS, INC. and RICHARD TAYLOR,

Defendants
-----x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VERIFIED
COMPLAINT ★

JAN 05 2008

★

Case No. LONG ISLAND OFFICE

JURY DEMAND

SPATT, J.

WALL, M.J.

Plaintiff, by its attorneys, Pinks, Arbeit & Nemeth, Esqs., complaining of defendants,
alleges:

PARTIES AND JURISDICTION

1. Subject matter jurisdiction is based on diversity of citizenship, 28 U.S.C. §1332, the amount in controversy exceeds \$75,000 exclusive of interest and costs.
2. Plaintiff is at all times mentioned an individual residing in the Town of Smithtown, State of New York.
3. Upon information and belief, defendant RailDreams, Inc. is a corporation organized and existing under the laws of the state of Michigan with principal place of business at Lake Linden, Michigan.
4. Upon information and belief, at all times hereinafter mentioned, defendant Richard Taylor, is the principal owner and operator of defendant RailDreams, Inc. and resides at Big Pine Key, Florida.
5. The causes of action hereinafter set forth arose within the state of New York and will not affect the title to real property situated outside of the state of New York.

FIRST CLAIM FOR RELIEF
AGAINST RAILDREAMS, INC. AND RICHARD RAYLOR

6. On December 19, 2001 defendant RailDreams, Inc. entered into a contract with plaintiff pursuant to which said defendant agreed to construct an HO-scale model railroad and install the same in plaintiff's residence in Mt. Sinai, New York.

7. The contract provided that plaintiff would pay defendant RailDreams, Inc. the sum of \$119,200 for construction and installation of the HO-scale model railroad described in the contract.

8. Thereafter defendants RailDreams, Inc. and Richard Taylor, by invoice, represented to plaintiff that they had performed work, labor and services and supplied materials having a value of \$2,694,833.45. The invoices were paid by the plaintiff to defendants.

9. That on or about June 25, 2008 plaintiff ascertained that under the contract, the total amount billed for the work, labor and services, materials and disbursements incurred by the plaintiff exceeded the amount due defendant by the sum of \$1,990,164.

10. Immediately upon discovering this, plaintiff called the same to the attention of defendants and demanded that the account be restated so as to correct the charges but defendants have refused and still refuse to restate the account and to repay plaintiff the amount which plaintiff overpaid the defendants and defendants refused and still refuse to restate the account.

11. That plaintiff's overpayment to defendants in the sum of \$1,990,164 represents money had and received. No part of that sum has been paid although duly demanded.

SECOND CLAIM FOR RELIEF
AGAINST RAILDREAMS, INC. AND RICHARD TAYLOR

12. The charges set forth on defendant's invoices are false and are based upon inflated and fictitious charges for work, labor and services, materials and disbursements.

13. Defendants were aware that the invoices were false and they were made with the intent to deceive the plaintiff and induce the plaintiff to pay defendants more than they were entitled to.

14. Plaintiff, at the time it made payment to defendants, believed the invoices to be true, relied upon them and thereby was induced to pay excess charges in the amount of \$1,990,164.

THIRD CLAIM FOR RELIEF
AGAINST RICHARD TAYLOR

15. By the terms of the agreement between plaintiff and defendant, Richard Taylor, defendant agreed to accurately invoice plaintiff for the work, labor and services which said defendant performed plus out-of-pocket expenses incurred during construction.

16. That defendant Richard Taylor had knowledge of the existence of the agreement and defendant's obligation to invoice accurately for the work, labor and services and disbursements incurred.

17. That defendant Richard Taylor had knowledge that defendant RailDreams, Inc. had wrongfully and fraudulently overbilled the plaintiff and that defendant RailDreams, Inc. was indebted to the plaintiff in the amount of said overbilling.

18. That defendant Richard Taylor, through a course of wrongful conduct, destroyed the financial well-being of defendant RailDreams, Inc. with the intention of procuring defendant

RailDreams, Inc.'s default under the terms of the agreement between defendant RailDreams, Inc. and the plaintiff.

19. That by virtue of the foregoing, defendant Richard Taylor intentionally induced defendant RailDreams, Inc. to breach its agreement with the plaintiff or otherwise render performance of the agreement between plaintiff and defendant RailDreams, Inc. impossible.

20. Consequently, plaintiff has been damaged in the sum of \$1,990,164.

WHEREFORE, plaintiff demands judgment against defendants jointly and severally:

1. In the amount of \$1,990,164;
2. With interest on that amount accruing at the rate of 9% per annum from June 25, 2008;
3. Exemplary damages and attorneys' fees;
4. Plaintiff's cost of this suit.

JURY DEMAND

Plaintiff, Robert L. Mercer, requests a jury trial of all issues.

Dated: Hauppauge, New York
December 31, 2008

Yours, etc.,

PINKS, ARBEIT & NEMETH, ESQS.
Attorneys for Plaintiff

By: 

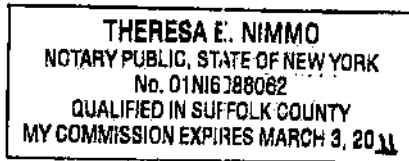
Steven G. Pinks
140 Fell Court - Suite 303
Hauppauge, New York 11788
(631) 234-4400

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

ROBERT L. MERCER, being duly sworn, deposes and says:


I am the plaintiff in the above action and have read the foregoing verified complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.





ROBERT L. MERCER

Sworn to before me this
18 day of December, 2008



Notary Public